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EXAMINER

LANIER, BENJAMIN E

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/992,138	<b>Applicant(s)</b> FUNCK ET AL.	
	<b>Examiner</b> BENJAMIN E. LANIER	<b>Art Unit</b> 2432	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed 13 October 2009 amends claims 9, 22, 23, and 36.

Applicant's amendment has been fully considered and entered.

### ***Response to Arguments***

2. Applicant argues, "The Office Action however asserts the specification does not describe specific network paths. Such complete paths are shown as well as described throughout the specification." This argument is not persuasive because the specification does not disclose a single "complete communication path" from the customer units 28 to the ACD system 16 that transmits both voice and data information. Applicant appears to content that the DTMF tones discussed on page 10 of the specification refers to the claimed customer data information. However, the specification is silent with respect to the encryption of these DTMF tones for transmission over the same "complete communication path".

3. Applicant has failed to point to support for the claim limitations in claim 36 that were rejected under §112, firth paragraph. Therefore, the rejections are maintained.

4. Applicant argues, "The terms 'complete' and 'communication path' are common English words (e.g., complete – having all necessary parts, Webster's New Collegiate Dictionary; path – the physical route a telecommunications signal follows from transmitter to receiver, Newton's Telecom Dictionary). Thus, the phase complete communication path is clear, and simply means a path (route) of communication extending completely (entirely) from the customer station to the ACD. The term was inserted into the claim merely to clarify it is the entire path from end to end that is claimed." This argument is not persuasive because the specification lacks support for any

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**specific** communication paths between the customer station and the ACD that includes **all necessary parts** that would make up the “complete communication path.” The only recitation of a “communication path” in the entire specification occurs in the last paragraph of page 5, which suggests:

Individual packets are routed to their destination IP address contained in the packet’s header, and may travel over different network paths before arriving at their final destination for re-assembly and re-sequencing.

5. This recitation of the specification fails to show any specific communication path between the customer station and the ACD, because the specification does not show **all necessary parts** that would make up the communication path. In contrast, the specification appears genuinely unconcerned with the path with which packets arrive at their destination IP address, since the specification suggests that “different network paths” could be used. However, because no specific communication path is shown in the specification, the requirements of §112 have not been met.

6. Applicant argues, “no communication path or channel extending from the customer station to the ACD or agent is established in Schulze solely through the cellular network, thus the cellular network cannot be the claimed channel which begins at the customer station and extends to end at the ACD or agent through the PSTN.” This argument is not persuasive because Schulze clearly shows a communication “channel” that begins at the customer station (Figure 1, 12), extending through the PSTN (Figure 1, 22) and extending through the ACD (Figure 1, 28) to the agent station ([0048], where the individual operator station receiving the call would be the agent station).

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7. Applicant argues, "The claim specifically calls for the entire channel or path over which both voice and data is transmitted to extent from the customer station to the ACD, which Schulze's cellular network clearly does not do." This argument is not persuasive because Schulze clearly shows a channel from the customer (Figure 1, 12) through the cellular network (Figure 1, 20) to the medical care provider (Figure 1, 28).

8. Applicant argues, "Schulze does not concern manually or by hand entered customer data as claimed in claims 1, 22, and 36." Examiner would like to point out that only claim 22 claims manually entering *by hand*.

9. Applicant argues, "The Office Action asserts data transmitted by the MVPM of Schulze is physiological data about the patient which meets the limitation of customer manually entered data. However, this data is changing real-time biological data which is being automatically acquired by MVPM with no manual effort by the patient...The Office Action asserts that a beating heart is human effort. This is an extreme distortion of the term 'manual.' The heart beat is not voluntary and thus not effort..." This argument is not persuasive because there is no defined requirement for a manual action to be voluntary.

10. Applicant has cited Webster's New Collegiate Dictionary in an attempt to show that the term "manually" inherently requires the "by hand" reading into the claim scope. This is not persuasive because MPEP 2111 requires that the claims be given their broadest reasonable interpretation. Dictionary.com defines "manually" as:

1. done, operated, worked, etc., by the hand or hands rather than by an electrical or electronic device: *a manual gearshift*.
2. involving or using human effort, skill, power, energy, etc.; physical: *manual labor*.

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11. The second definition is a broader reading of the term in that only “human effort” is required. This human effort as defined can be human energy. Therefore, in compliance with MPEP 2111, the broadest reasonable interpretation of the term “manually”, is requiring “involving human energy”. This is clearly shown in Schulze because the reading of the physiological information requires the beating of the human heart, which requires human energy or effort.

12. Examiner wishes to note that Applicant has made a clear delineation between “manual entry” of customer data and “entry by hand” by virtue of the claims themselves. Claim 1 requires “data manually entered...” Claim 22 requires “data entered by hand...” Claim 36 requires “data manually entered...” If the term “manually” indeed means what Applicant alleges, then there would be no need to differentiate “manual entry” and “entry by hand” in the claims.

13. Applicant argues, “by the reasoning of the Office Action, the entry of heart data would be automatic entry of 'manual' data, not manual entry of data.” In response, it is well settled that it is not "invention" to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result. In re Venner, 120 USPQ 192.

14. Applicant argues, “the physiological data is acquired real-time changing data, which is the opposite of predetermined data.” This argument is not persuasive because the physiological data is predetermined to the extent that the MVPMP is receiving pulse rate data.

***Claim Rejections - 35 USC § 112***

15. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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16. Claims 22, 23, 36 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The added material which is not supported by the original disclosure is as follows: a complete communication path extending from the customer station and continuing to the ACD under a first communication process, a communication channel, the channel extending from the customer station, extending through the PSTN and extending to the ACD under a first communication process, a communication means configured to establish a first two way communication channel, extending from the customer station through the PSTN to the ACD, the customer processing means configured automatically to transmit the encrypted customer data from the customer station to the ACD using only the first two-way communication channel.

17. The specification discusses different types of networks that can be used to transmit voice and data to/from the customer to the ACD, but the specification does not specify the particular paths that are used over these networks to transmit the voice and data to/from the customer to the ACD.

18. Paragraph 22, of the publication 2003/0097339, specifies that “Individual packets are routed to their destination IP address contained in the packet’s header, and may travel over different network paths before arriving at their final destination for re-assembly and re-sequencing.”

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19. This is the only recitation in the specification with respect to a network transmission path, and this recitation does not rise to the level of a “complete communication path” as claimed, let alone a “complete communication path” with respect to both voice and data transmissions.

20. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

21. Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

22. The claim 22 recites, “a first communication channel complete communication path”, “a complete two-way communication channel,” which render the claims vague and indefinite because the specification does not clearly define a communications channel/path with respect to how or when it is considered complete as claimed.

23. For the purposes of examination, the claims will be viewed in light one of the many disclosed embodiments. Specifically, paragraph 36 of the publication 2003/0097339, detail an embodiment where a cellular network is used to transmit voice and data between the customer and the ACD without specifics with respect to particular transmission paths.

### ***Claim Rejections - 35 USC § 102***

24. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this



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subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

25. Claims 1-9, 16-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Schulze, U.S. Publication No. 2001/0027384. Referring to claims 1, 20, Schulze discloses a wireless biotelemetry monitoring system wherein a patient wearing a multi-variable patient monitor (MVPM) can be monitored using the Wireless Internet Bio-telemetry system (WIBMS). The MVPM has the capability of communicating bi-directionally via voice in the same manner as a normal cellular telephone ([0045]) using PSTN connections to a host computer ([0045]). The MVPM can communicate voice traffic from the patient over a PSTN channel to a 911 operator ([0048] & [0057]), which meets the limitation of a first communication channel forming a communication path beginning at the customer station extending through the PSTN and extending through the ACD to the agent station using a first communication process. The MVPM comprises a processor (Claim 1) and also provides means to transmit data traffic over the same channel periodically, in real-time, or by request by the operator on the other end ([0045], [0047], [0048]), which meets the limitation of a customer data processor that operates independently of the first communication process configured to handle two way communication between the customer and the agent of the ACD under a second communication process that is different than the first communication process. The data transmitted by the MVPM is physiological data, such as pulse rate, about the patient wearing the MVPM ([0044] & [0047] & [0049]), which meets the limitation of the customer data processor configured to store and process predetermined customer data manually entered into the customer processor by the customer, the customer data transmitted to the ACD is preformatted to facilitate entry of pertinent customer data into a customer order form. The data transmitted from the MVPM is

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done so in an encrypted fashion to protect patient privacy ([0048]), which meets the limitation of a data encryptor operatively coupled to the customer data processor and configured to encrypt the customer data. The encrypted data can be transmitted after a request from the operator ([0048]) and in response to an alarm condition ([0050]), which meets the limitation of the customer data processor configured to automatically transmit the encrypted customer data from the customer station to the ACD on the first communication channel upon receiving a predetermined signal. The medical service provider or 911 operator receives the transmitted data so that the patient's physiological data can be investigated ([0047] & [0057]). Schulze does not expressly disclose that the encrypted data that is transmitted from the MVPM is decrypted on the receiving end, however, the purpose of the invention is to monitor the physiological data of the patient wearing the MVPM. Therefore, decryption capabilities are necessarily present in the receiving end of the Wireless Internet Bio-telemetry system of Schulze, which would meet the limitation of a customer data interpreter operatively coupled to the ACD for receiving and decrypting the encrypted customer data to facilitate presentation of the customer data to the agent. Schulze discloses that the MVPM sends data on a periodic basis over a cellular network to the host ([0045]). The cellular network is shown in figure 1 as element 20 ([0046]). This network is used by the present invention to transmit voice **and** data ([0046] & Figure 1 see elements 14 and 16). Therefore, Schulze is clearly concerned with the transmission of voice and data over the same communication channel as claimed (Figure 1 shows voice 14 and data 16 transmitted over the same wireless network 20).

Referring to claim 2, Schulze discloses that the data transmitted by the MVPM is physiological data about the patient wearing the MVPM ([0044] & [0047]), which meets the

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limitation of the customer data is predetermined data. The MVPM comprises a processor (Claim 1) and also provides means to transmit data traffic over the same channel periodically, in real-time ([0045], [0047], [0048]), which meets the limitation of the ACD transmits the predetermined signal to the customer data processor causing the predetermined customer data to be automatically transmitted to the ACD and presented to the agent.

Referring to claims 3, 4, Schulze discloses that the customer data can be transmitted to the host/service provider in response to an alarm condition ([0050]), which meets the limitation of the customer data is sent to the ACD prior to the two way communication between the customer and the agent, the customer data is automatically transmitted to the agent of the ACD prior to a voice communication between the customer and the agent.

Referring to claims 5, 6, Schulze discloses that the MVPM can communicate voice data while continuously communicating the physiological data ([0045]), which meets the limitation of the customer data is sent to the ACD during the two-way communication between the customer and the agent, the customer data is sent to the ACD substantially simultaneously with the two way communication between the customer and the agent.

Referring to claim 7, Schulze discloses that the host initiates a voice call to the MVPM which triggers the MVPM to establish a data call back to the host ([0057]), which meets the limitation of the customer data is automatically transmitted to the agent of the ACD after voice communication between the customer and the agent has terminated.

Referring to claim 8, Schulze discloses that the customer data can be transmitted to the host/service provider in response to an alarm condition ([0050]), which meets the limitation of

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the customer issues the predetermined signal to facilitate automatic transmission of the customer data to the ACD.

Referring to claim 9, Schulze does not expressly disclose that the information transmitted from the MVPM includes a patient name or address, but a patient name and address would be necessarily included in the transmitted information from the MVPM because the purpose of system is to provide medical monitoring services to a mobile patient. Therefore, it would be imperative to know who the patient is, and where there are in the event of a medical emergency.

Referring to claim 16, Schulze discloses that the MVPM includes a processor and wireless communication device (claim 1), which meets the limitation of the customer data processor includes a computer and a modem configured to facilitate communicate between the customer and the agent of the ACD.

Referring to claim 17, Schulze discloses that the network is an ISDN network ([0048]), which is provided over a POTS.

Referring to claim 18, Schulze discloses that the MVPM has buttons that are used to dial a phone number ([0059]) and that the voice communication network is PSTN, which requires DTMF tones.

Referring to claim 19, Schulze discloses that the MVPM has mobile telephone functionality ([0059]).

### ***Claim Rejections - 35 USC § 103***

26. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

27. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

28. Claims 1-9, 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schulze, U.S. Publication No. 2001/0027384. Referring to claims 1, 20, Schulze discloses a wireless biotelemetry monitoring system wherein a patient wearing a multi-variable patient monitor (MVPM) can be monitored using the Wireless Internet Bio-telemetry system (WIBMS). The MVPM has the capability of communicating bi-directionally via voice in the same manner as a normal cellular telephone ([0045]) using PSTN connections to a host computer ([0045]). The MVPM can communicate voice traffic from the patient over a PSTN channel to a 911 operator ([0048] & [0057]), which meets the limitation of a first communication channel forming a communication path beginning at the customer station extending through the PSTN and extending through the ACD to the agent station using a first communication process. The MVPM comprises a processor (Claim 1) and also provides means to transmit data traffic over the same channel periodically, in real-time, or by request by the operator on the other end ([0045], [0047], [0048]), which meets the limitation of a customer data processor that operates independently of the first communication process configured to handle two way communication between the customer and the agent of the ACD under a second communication process that is

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different than the first communication process. The data transmitted from the MVPM is done so in an encrypted fashion to protect patient privacy ([0048]), which meets the limitation of a data encryptor operatively coupled to the customer data processor and configured to encrypt the customer data. The encrypted data can be transmitted after a request from the operator ([0048]) and in response to an alarm condition ([0050]), which meets the limitation of the customer data processor configured to automatically transmit the encrypted customer data from the customer station to the ACD on the first communication channel upon receiving a predetermined signal. The medical service provider or 911 operator receives the transmitted data so that the patient's physiological data can be investigated ([0047] & [0057]). Schulze does not expressly disclose that the encrypted data that is transmitted from the MVPM is decrypted on the receiving end, however, the purpose of the invention is to monitor the physiological data of the patient wearing the MVPM. Therefore, decryption capabilities are necessarily present in the receiving end of the Wireless Internet Bio-telemetry system of Schulze, which would meet the limitation of a customer data interpreter operatively coupled to the ACD for receiving and decrypting the encrypted customer data to facilitate presentation of the customer data to the agent. Schulze discloses that the MVPM sends data on a periodic basis over a cellular network to the host ([0045]). The cellular network is shown in figure 1 as element 20 ([0046]). This network is used by the present invention to transmit voice **and** data ([0046] & Figure 1 see elements 14 and 16). Therefore, Schulze is clearly concerned with the transmission of voice and data over the same communication channel as claimed (Figure 1 shows voice 14 and data 16 transmitted over the same wireless network 20). The data transmitted by the MVPM is physiological data, such as pulse rate, about the patient wearing the MVPM ([0044] & [0047] & [0049]), which meets the

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limitation of the customer data processor configured to store and process predetermined customer data manually entered into the customer processor by the customer, the customer data transmitted to the ACD is preformatted to facilitate entry of pertinent customer data into a customer order form. Furthermore, it is well settled that it is not "invention" to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result. In re Venner, 120 USPQ 192.

Referring to claim 2, Schulze discloses that the data transmitted by the MVPM is physiological data about the patient wearing the MVPM ([0044] & [0047]), which meets the limitation of the customer data is predetermined data. The MVPM comprises a processor (Claim 1) and also provides means to transmit data traffic over the same channel periodically, in real-time ([0045], [0047], [0048]), which meets the limitation of the ACD transmits the predetermined signal to the customer data processor causing the predetermined customer data to be automatically transmitted to the ACD and presented to the agent.

Referring to claims 3, 4, Schulze discloses that the customer data can be transmitted to the host/service provider in response to an alarm condition ([0050]), which meets the limitation of the customer data is sent to the ACD prior to the two way communication between the customer and the agent, the customer data is automatically transmitted to the agent of the ACD prior to a voice communication between the customer and the agent.

Referring to claims 5, 6, Schulze discloses that the MVPM can communicate voice data while continuously communicating the physiological data ([0045]), which meets the limitation of the customer data is sent to the ACD during the two-way communication between the customer

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and the agent, the customer data is sent to the ACD substantially simultaneously with the two way communication between the customer and the agent.

Referring to claim 7, Schulze discloses that the host initiates a voice call to the MVPM which triggers the MVPM to establish a data call back to the host ([0057]), which meets the limitation of the customer data is automatically transmitted to the agent of the ACD after voice communication between the customer and the agent has terminated.

Referring to claim 8, Schulze discloses that the customer data can be transmitted to the host/service provider in response to an alarm condition ([0050]), which meets the limitation of the customer issues the predetermined signal to facilitate automatic transmission of the customer data to the ACD.

Referring to claim 9, Schulze does not expressly disclose that the information transmitted from the MVPM includes a patient name or address, but a patient name and address would be necessarily included in the transmitted information from the MVPM because the purpose of system is to provide medical monitoring services to a mobile patient. Therefore, it would be imperative to know who the patient is, and where there are in the event of a medical emergency.

Referring to claim 16, Schulze discloses that the MVPM includes a processor and wireless communication device (claim 1), which meets the limitation of the customer data processor includes a computer and a modem configured to facilitate communicate between the customer and the agent of the ACD.

Referring to claim 17, Schulze discloses that the network is an ISDN network ([0048]), which is provided over a POTS.



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Referring to claim 18, Schulze discloses that the MVPM has buttons that are used to dial a phone number ([0059]) and that the voice communication network is PSTN, which requires DTMF tones.

Referring to claim 19, Schulze discloses that the MVPM has mobile telephone functionality ([0059]).

29. Claims 13-15, 21, 23-28, 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schulze, U.S. Publication No. 2001/0027384, in view of Schuster, U.S. Patent No. 6,857,072. Referring to claims 13-15, Schulze discloses that public network used for communication can be a cable modem connection ([0048]) but does not expressly disclose VOIP protocol. It would have been obvious to one of ordinary skill in the art at the time the invention was made for the data network of Schulze to be a VOIP network because the data network of Schulze is a data network that transmits voice packets which is VOIP network as described in Schuster (Col. 5, lines 5-9).

Referring to claim 21, Schulze discloses that the MVPM has mobile telephone functionality ([0059]), but does not disclose that the MVPM is a PDA. It would have been obvious to one of ordinary skill in the art at the time the invention was made for the MVPM of Schulze to be a PDA because the PDA as described in Schuster (Col. 5, lines 50-64) contains all the desired functionality of the desired implementation of Schulze in one device with a user friendly interface (See Schuster Col. 5, lines 50-64 & Figure 13).

Referring to claim 23, Schulze discloses a wireless biotelemetry monitoring system wherein a patient wearing a multi-variable patient monitor (MVPM) can be monitored using the Wireless Internet Bio-telemetry system (WIBMS). The MVPM has the capability of

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communicating bi-directionally via voice in the same manner as a normal cellular telephone ([0045]) using PSTN connections to a host computer ([0045]). The MVPM can communicate voice traffic from the patient over a PSTN channel to a 911 operator ([0048] & [0057]), which meets the limitation of a telephonic communication device adapted to establish a communication channel, the channel extending from the customer station, extending through the PSTN and extending to the ACD, under a first communication process. The MVPM comprises a processor (Claim 1) and also provides means to transmit data traffic over the same channel periodically, in real-time, or by request by the operator on the other end ([0022], [0045], [0047], [0048]), which meets the limitation of a customer data processor operatively coupled to the telephonic communication device for storing and processing predetermined customer data provided by the customer and retained in memory for subsequent transmission, operates independently of the first communication process configured to handle two way communication between the customer and the agent of the ACD over the two way communication channel under a second communication process that is different than the first communication process. The data transmitted by the MVPM is physiological data about the patient wearing the MVPM ([0044] & [0047]), which meets the limitation of the customer data processor configured to store and process customer data provided by the customer. The data transmitted from the MVPM is done so in an encrypted fashion to protect patient privacy ([0048]), which meets the limitation of a data encryptor operatively coupled to the customer data processor and configured to encrypt the customer data. The encrypted data can be transmitted after a request from the operator ([0048]) and in response to an alarm condition ([0050]), which meets the limitation of the customer data processor configured to transmit the encrypted customer data to the ACD upon receiving a

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predetermined signal. The medical service provider or 911 operator receives the transmitted data so that the patient's physiological data can be investigated ([0047] & [0057]). Schulze does not expressly disclose that the encrypted data that is transmitted from the MVPM is decrypted on the receiving end, however, the purpose of the invention is to monitor the physiological data of the patient wearing the MVPM. Therefore, decryption capabilities are necessarily present in the receiving end of the Wireless Internet Bio-telemetry system of Schulze, which would meet the limitation of a customer data interpreter operatively coupled to the ACD for receiving and decrypting the encrypted customer data to facilitate presentation of the customer data to the agent. Schulze discloses that public network used for communication can be a cable modem connection ([0048]) but does not expressly disclose VOIP protocol. It would have been obvious to one of ordinary skill in the art at the time the invention was made for the data network of Schulze to be a VOIP network because the data network of Schulze is a data network that transmits voice packets which is VOIP network as described in Schuster (Col. 5, lines 5-9).

Referring to claim 24, Schulze discloses a wireless biotelemetry monitoring system wherein a patient wearing a multi-variable patient monitor (MVPM) can be monitored using the Wireless Internet Bio-telemetry system (WIBMS). The MVPM has the capability of communicating bi-directionally via voice in the same manner as a normal cellular telephone ([0045]) using PSTN connections to a host computer ([0045]). The MVPM can communicate voice traffic from the patient over a PSTN channel to a 911 operator ([0048] & [0057]), which meets the limitation of a communication device adapted to establish a communication channel, the channel extending from the customer station, through the PSTN and ending at the ACD under a first communication process. The MVPM comprises a processor (Claim 1) and also

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provides means to transmit data traffic over the same channel periodically, in real-time, or by request by the operator on the other end ([0045], [0047], [0048]), which meets the limitation of storing predetermined customer data provided by customer, in a customer data processor of the telephonic communication device, the customer data processor operatively coupled to the telephonic communication device, independently transmitting the customer data from the customer station to the ACD over the communication channel under a second communication process that is different then the first communication process. The data transmitted by the MVPM is physiological data about the patient wearing the MVPM ([0044] & [0047]). The data transmitted from the MVPM is done so in an encrypted fashion to protect patient privacy ([0048]), which meets the limitation of a data encryptor operatively coupled to the customer data processor and configured to encrypt the customer data, manually provided customer data. The encrypted data can be transmitted after a request from the operator ([0048]) and in response to an alarm condition ([0050]), which meets the limitation of the customer data processor configured to transmit the encrypted customer data to the ACD upon receiving a predetermined signal. The medical service provider or 911 operator receives the transmitted data so that the patient's physiological data can be investigated ([0047] & [0057]). Schulze does not expressly disclose that the encrypted data that is transmitted from the MVPM is decrypted on the receiving end, however, the purpose of the invention is to monitor the physiological data of the patient wearing the MVPM. Therefore, decryption capabilities are necessarily present in the receiving end of the Wireless Internet Bio-telemetry system of Schulze, which would meet the limitation of a customer data interpreter operatively coupled to the ACD for receiving and decrypting the encrypted customer data to facilitate presentation of the customer data to the agent. Schulze

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discloses that public network used for communication can be a cable modem connection ([0048]) but does not expressly disclose VOIP protocol. It would have been obvious to one of ordinary skill in the art at the time the invention was made for the data network of Schulze to be a VOIP network because the data network of Schulze is a data network that transmits voice packets which is VOIP network as described in Schuster (Col. 5, lines 5-9). The data transmitted by the MVPKM is physiological data, such as pulse rate, about the patient wearing the MVPKM ([0044] & [0047] & [0049]), which meets the limitation of the customer data processor configured to store and process predetermined customer data manually entered into the customer processor by the customer, the customer data transmitted to the ACD is preformatted to facilitate entry of pertinent customer data into a customer order form. Furthermore, it is well settled that it is not "invention" to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result. In re Venner, 120 USPQ 192.

Referring to claim 25, Schulze discloses that the host initiates a voice call to the MVPKM which triggers the MVPKM to establish a data call back to the host ([0057]), which meets the limitation of the ACD transmits the predetermined signal to the customer data processor causing the customer data to be automatically transmitted to the ACD and presented to the agent.

Referring to claim 26, Schulze discloses that the customer data can be transmitted to the host/service provider in response to an alarm condition ([0050]), which meets the limitation of the customer data is automatically transmitted to the agent of the ACD prior to a voice communication between the customer and the agent.

Referring to claim 27, Schulze discloses that the customer data can be transmitted to the host/service provider in response to an alarm condition ([0050]), which meets the limitation of

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the customer issues the predetermined signal to facilitate automatic transmission of the customer data to the ACD.

Referring to claim 28, Schulze does not expressly disclose that the information transmitted from the MVPM includes a patient name or address, but a patient name and address would be necessarily included in the transmitted information from the MVPM because the purpose of system is to provide medical monitoring services to a mobile patient. Therefore, it would be imperative to know who the patient is, and where there are in the event of a medical emergency.

Referring to claim 32, Schulze discloses that the network is an ISDN network ([0048]), which is provided over a POTS.

Referring to claim 33, Schulze discloses that the MVPM has buttons that are used to dial a phone number ([0059]) and that the voice communication network is PSTN, which requires DTMF tones.

Referring to claim 34, Schulze discloses that the MVPM has mobile telephone functionality ([0059]).

Referring to claim 35, Schulze discloses that the MVPM has mobile telephone functionality ([0059]), but does not disclose that the MVPM is a PDA. It would have been obvious to one of ordinary skill in the art at the time the invention was made for the MVPM of Schulze to be a PDA because the PDA as described in Schuster (Col. 5, lines 50-64) contains all the desired functionality of the desired implementation of Schulze in one device with a user friendly interface (See Schuster Col. 5, lines 50-64 & Figure 13).

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30. Claims 22, 36-39, 45, 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schulze, U.S. Publication No. 2001/0027384, in view of Reuss, U.S. Patent No. 6,364,834.

Referring to claim 22, discloses a wireless biotelemetry monitoring system wherein a patient wearing a multi-variable patient monitor (MVPM) can be monitored using the Wireless Internet Bio-telemetry system (WIBMS). The MVPM has the capability of communicating bi-directionally via voice in the same manner as a normal cellular telephone ([0045]) using PSTN connections to a host computer ([0045]). The MVPM can communicate voice traffic from the patient over a PSTN channel to a 911 operator ([0048] & [0057]), which meets the limitation of a telephonic communication device configured to establish a two way communication channel forming a complete communication path extending from the customer station, and continuing to the ACD under a first communication process. The MVPM comprises a processor (Claim 1) and also provides means to transmit data traffic over the same channel periodically, in real-time, or by request by the operator on the other end ([0045], [0047], [0048]), which meets the limitation of a customer data processor means operatively coupled to the telephonic communication device, independently of the first communication process configured to handle two way communication between the customer and the agent of the ACD over the two way communication channel under a second communication process that is different than the first communication process. The data transmitted from the MVPM is done so in an encrypted fashion to protect patient privacy ([0048]), which meets the limitation of a data encryptor operatively coupled to the customer data processor and configured to encrypt the customer data. The encrypted data can be transmitted after a request from the operator ([0048]) and in response to an alarm condition ([0050]), which meets the limitation of the customer data processor configured to transmit the encrypted

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customer data to the ACD upon receiving a predetermined signal from the customer. The medical service provider or 911 operator receives the transmitted data so that the patient's physiological data can be investigated ([0047] & [0057]). Schulze does not expressly disclose that the encrypted data that is transmitted from the MVPM is decrypted on the receiving end, however, the purpose of the invention is to monitor the physiological data of the patient wearing the MVPM. Therefore, decryption capabilities are necessarily present in the receiving end of the Wireless Internet Bio-telemetry system of Schulze, which would meet the limitation of a customer data interpreter operatively coupled to the ACD for receiving and decrypting the encrypted customer data to facilitate presentation of the customer data to the agent. Schulze does not disclose that the MVPM includes customer data entered by hand by the customer. Reuss discloses a medical monitoring system that utilizes a bio-telemetry device that stores patient identification information that is input by hand, via a bar code scanner (Col. 4, lines 5-21), which meets the limitation of a customer data processing means for storing a processing predetermined customer data entered by hand by the customer. It would have been obvious to one of ordinary skill in the art at the time the invention was made for the customer of Schulze to enter customer information into the MVPM by hand in order to provide updated information that might not otherwise be available as taught by Reuss (Col. 5, lines 13-21).

Referring to claim 36, Schulze discloses a wireless biotelemetry monitoring system wherein a patient wearing a multi-variable patient monitor (MVPM) can be monitored using the Wireless Internet Bio-telemetry system (WIBMS). The MVPM has the capability of communicating bi-directionally via voice in the same manner as a normal cellular telephone ([0045]) using PSTN connections to a host computer ([0045]). The MVPM can communicate



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voice traffic from the patient over a PSTN channel to a 911 operator ([0048] & [0057]), which meets the limitation of a communication means configured to establish a first two way communication channel extending from the customer station through the PSTN to the ACD under a first communication process. The MVPM comprises a processor (Claim 1) and also provides means to transmit data traffic over the same channel periodically, in real-time, or by request by the operator on the other end ([0045], [0047], [0048]), which meets the limitation of a customer processing means that operates independently of the first communication process that is configured to handle two way communication between the customer and the agent of the ACD under a second communication process that is different than the first communication process, configured to automatically transmit the encrypted customer data from the customer station to the ACD using only the original two-way communication channel under a second communication process that is different than the first communication process upon receiving a predetermined signal. The data transmitted from the MVPM is done so in an encrypted fashion to protect patient privacy ([0048]), which meets the limitation of means for encrypting operatively coupled to the customer processing means and configured to encrypt the customer data. The encrypted data can be transmitted after a request from the operator ([0048]) and in response to an alarm condition ([0050]), which meets the limitation of the customer data processor configured to transmit the encrypted customer data to the ACD upon receiving a predetermined signal. The medical service provider or 911 operator receives the transmitted data so that the patient's physiological data can be investigated ([0047] & [0057]). Schulze does not expressly disclose that the encrypted data that is transmitted from the MVPM is decrypted on the receiving end, however, the purpose of the invention is to monitor the physiological data of the patient wearing

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the MVPM. Therefore, decryption capabilities are necessarily present in the receiving end of the Wireless Internet Bio-telemetry system of Schulze, which would meet the limitation of a customer data interpreter operatively coupled to the ACD for receiving and decrypting the encrypted customer data to facilitate presentation of the customer data to the agent. Schulze does not disclose that the MVPM includes manually entered customer identification data. Reuss discloses a medical monitoring system that utilizes a bio-telemetry device that stores patient identification information, caregiver identity, and pharmaceuticals received, that is input by hand, via a bar code scanner (Col. 4, lines 5-21), which meets the limitation of a customer data processing means configured to store and process predetermined customer transaction history and preference data manually entered by the customer. It would have been obvious to one of ordinary skill in the art at the time the invention was made for the customer of Schulze to enter customer information into the MVPM in order to provide updated information that might not otherwise be available as taught by Reuss (Col. 5, lines 13-21). The data transmitted by the MVPM is physiological data, such as pulse rate, about the patient wearing the MVPM ([0044] & [0047] & [0049]), which meets the limitation of the customer data processor configured to store and process predetermined customer data manually entered into the customer processor by the customer, the customer data transmitted to the ACD is preformatted to facilitate entry of pertinent customer data into a customer order form. Furthermore, it is well settled that it is not "invention" to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result. In re Venner, 120 USPQ 192.

Referring to claim 37, Schulze discloses that the host initiates a voice call to the MVPM which triggers the MVPM to establish a data call back to the host ([0057]), which meets the

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limitation of the ACD transmits the predetermined signal to the customer data processor causing the customer data to be automatically transmitted to the ACD and presented to the agent.

Referring to claim 38, Schulze discloses that the customer data can be transmitted to the host/service provider in response to an alarm condition ([0050]), which meets the limitation of the customer issues the predetermined signal to facilitate automatic transmission of the customer data to the ACD.

Referring to claim 39, Schulze does not expressly disclose that the information transmitted from the MVPM includes a patient name or address, but a patient name and address would be necessarily included in the transmitted information from the MVPM because the purpose of system is to provide medical monitoring services to a mobile patient. Therefore, it would be imperative to know who the patient is, and where there are in the event of a medical emergency.

Referring to claim 45, Schulze discloses that the MVPM has mobile telephone functionality ([0059]).

Referring to claim 46, Schulze discloses that the network is an ISDN network ([0048]), which is provided over a POTS.

31. Claims 10-12, 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schulze, U.S. Publication No. 2001/0027384, in view of Creswell, U.S. Patent No. 6,823,318. Referring to claims 10-12, 29-31, Schulze discloses that the encrypted data can be transmitted after a request from the operator ([0048]) and in response to an alarm condition ([0050]). The medical service provider or 911 operator receives the transmitted data so that the patient's physiological data can be investigated ([0047] & [0057]). Schulze does not disclose that the

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medical service provider has a specific vendor identification code. Creswell discloses a secure purchasing system wherein a purchaser receives the identity of a vendor when attempting to purchase a specific item (Col. 3, lines 24-56). The purchaser information that is transmitted to the vendor server is determined by the security association with the purchaser and that vendor server (Col. 4, line 7 – Col. 5, line 20), which meets the limitation of a vendor identification code transmitted to the customer data processor, the vendor identification code identifying a specific vendor associated with the communication between the customer and the agent, the customer data processor assigns one of a plurality of security levels to the vendor identification code, all of the customer data is transmitted to the agent if the vendor identification code is assigned the first security level, a portion of the customer data is transmitted to the agent if the vendor identification code is assigned the second security level, and non of the customer data is transmitted to the agent if the vendor identification code is assigned the third security level. It would have been obvious to one of ordinary skill in the art at the time the invention was made to determine what client information in Schulze, the client decided to transmit based on the specific medical service provider in order to avoid having the user's personal information available to unauthorized individuals as taught in Creswell (Col. 1, lines 24-26).

32. Claims 42-44 rejected under 35 U.S.C. 103(a) as being unpatentable over Schulze, U.S. Publication No. 2001/0027384, in view of Reuss, U.S. Patent No. 6,364,834 as applied to claim 36 above, and further in view of Schuster, U.S. Patent No. 6,857,072. Referring to claims 42-44, Schulze discloses that public network used for communication can be a cable modem connection ([0048]) but does not expressly disclose VOIP protocol. It would have been obvious to one of ordinary skill in the art at the time the invention was made for the data network of Schulze to be

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a VOIP network because the data network of Schulze is a data network that transmits voice packets which is VOIP network as described in Schuster (Col. 5, lines 5-9).

33. Claims 40, 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schulze, U.S. Publication No. 2001/0027384, in view of Reuss, U.S. Patent No. 6,364,834 as applied to claim 36 above, and further in view of Creswell, U.S. Patent No. 6,823,318. Referring to claim 40, 41, Schulze discloses that the encrypted data can be transmitted after a request from the operator ([0048]) and in response to an alarm condition ([0050]). The medical service provider or 911 operator receives the transmitted data so that the patient's physiological data can be investigated ([0047] & [0057]). Schulze does not disclose that the medical service provider has a specific vendor identification code. Creswell discloses a secure purchasing system wherein a purchaser receives the identity of a vendor when attempting to purchase a specific item (Col. 3, lines 24-56). The purchaser information that is transmitted to the vendor server is determined by the security association with the purchaser and that vendor server (Col. 4, line 7 – Col. 5, line 20), which meets the limitation of a vendor identification code transmitted to the customer data processor, the vendor identification code identifying a specific vendor associated with the communication between the customer and the agent, the customer data processor assigns one of a plurality of security levels to the vendor identification code, all of the customer data is transmitted to the agent if the vendor identification code is assigned the first security level, a portion of the customer data is transmitted to the agent if the vendor identification code is assigned the second security level, and non of the customer data is transmitted to the agent if the vendor identification code is assigned the third security level. It would have been obvious to one of ordinary skill in the art at the time the invention was made to determine what client

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information in Schulze, the client decided to transmit based on the specific medical service provider in order to avoid having the user's personal information available to unauthorized individuals as taught in Creswell (Col. 1, lines 24-26).

***Conclusion***

34. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

35. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BENJAMIN E. LANIER whose telephone number is (571)272-3805. The examiner can normally be reached on M-Th 7:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gilberto Barron can be reached on 571-272-3799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Benjamin E Lanier/  
Primary Examiner, Art Unit 2432